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STATUTES CITED

Constitution of the United States:

Fifth Amendment 2, 4, 5, 8
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Fourteenth Amendment 2, 4, 5, 8

Judicial Code, Sections 237(a) and 237(b), as amended by the Acts of February 13, 1925, Ch. 295, 43 Stat. 936; January 31, 1928, Ch. 14, 45 Stat. 54; and April 26, 1928, Ch. 440, 45 Stat. 466 1

United States Code, Title 28, Sections 344(a), 861(a) and 861(b) 2

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 201

GRACE McNAMARA, ET AL.,
Petitioner and Appellant,

vs.

THE SALVATION ARMY, INCORPORATED, A CORPORATION,
Appellee and Respondent.

JURISDICTIONAL STATEMENT

I

Statutes Sustaining Jurisdiction

The statute believed to sustain jurisdiction of the United States Supreme Court in this matter are Sections 237(a) and 237(b) of the United States Judicial Code, as amended by the Acts of February 13, 1925, Ch. 295, 43 Stat. 936; January 31, 1928, Ch. 14, 45 Stat. 54; and April 26, 1928, Ch. 440, 45 Stat. 466 and which statute, in part, reads as follows:

> "(b) . . . It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination . . . any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a

decision could be had where is drawn in question the validity of a treaty or statute of the United States . . . or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution . . ."

Further reference, under the foregoing heading, is also made to Title 28, United States Code Secs. 344(a), 861(a) and 861(b).

II

The title, right, privilege or immunity specially set up or claimed in this case and statement of the grounds upon which it is contended the questions involved are substantial.

In this case, after judgment in the trial court, this appellant duly and regularly filed and perfected her appeal from said judgment to the Supreme Court of the State of Kansas upon the claim that in the rendition of said judgment appellant, as defendant in the trial court, was denied an opportunity for a hearing therein; that by and through the rendition of said judgment her property was by its terms ordered to be taken from her, without due process of law, in violation of Articles 5 and 6 and the 14th Amendment to the Constitution of the United States.

III

The Nature of the Case

In the month of July, 1945, respondent, The Salvation Army, Incorporated, filed a petition to quiet title to real estate, in the County of Douglas, State of Kansas, as against this appellant, as defendant therein. Service by publication was made on this appellant, a resident of California, who filed her answer, *in propria persona,* on October 3, 1945, denying and disputing the claim of title in The Sal-

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vation Army, Incorporated. On November 29, 1945, the Clerk of the Court wrote appellant that the action was set for trial on December 15, 1945. On December 6, 1945, appellant filed a motion to take her deposition as her own witness to present her testimony in the trial of said action and also filed a motion for a continuance of the trial to permit her to take said deposition; proposed interrogatories, and a commission were attached to said motion.

The case was tried December 15, 1945, without action by the trial court on the motions of appellant for a commission or upon her motion for continuance to enable her to take her deposition. On February 4, 1946, the trial Judge rendered judgment against this appellant and quieting title to appellant's property without any action whatsoever on her application for a deposition or on her application for a continuance and without appellant having been afforded a hearing or an opportunity to present her evidence or testimony in said case and cause. Said judgment, as rendered, recited among other things that, "The Court, after hearing the evidence, INCLUDING THE DEPOSITION OF THE DEFENDANT, etc.", and no such deposition was ever taken, allowed or presented in the trial of the action, nor was appellant advised as to whether the case would be continued pursuant to her motion to allow her an opportunity to have her deposition taken or to appear in person on a continued date.

From this judgment, appellant, in due time, appealed to the Supreme Court of the State of Kansas. The Supreme Court of Kansas affirmed the judgment of the District Court of Douglas County, Kansas, on the 25th day of January, 1947.

In due time appellant filed a motion for rehearing in the Supreme Court on the 13th day of February, 1947, which motion for rehearing was denied by the Supreme Court of the State of Kansas on March 13, 1947, thereupon, making

the judgment of the Supreme Court of Kansas final upon the issues involved.

It was to correct this judgment that an appeal was prayed for to the Supreme Court of the United States, which appeal was allowed by the Honorable W. W. Harvey, Presiding Judge of the Supreme Court of the State of Kansas, on the 20th day of May, 1947.

The Supreme Court of the State of Kansas is the highest court of the State of Kansas in which a decision in this case may be had.

IV

Assignment of Errors

In her appeal from the judgment of the District Court of the County of Douglas, State of Kansas, quieting title in and to The Salvation Army, Incorporated, of that certain real property located in Lawrence, Kansas, as against this appellant and defendant therein and adjudicating that this appellant had no further right, title or interest in or to said real property, this appellant contended that the said District Court of Douglas County, Kansas, did not afford this appellant due process of law guaranteed by and under Articles 5 and 6 and the 14th amendment to the Constitution of the United States by and through the actions, rulings, and/or refusals of the Judge of the trial court to act or rule upon the applications of this appellant for the issuance of a Commission to take her deposition to present the same as evidence and testimony on her own behalf in the trial of and in said action; —and her Application for a continuance to permit her to have such deposition taken.

A further Federal question sought to be reviewed was raised by appellant in her appeal to and contention made before the Supreme Court of the State of Kansas that she was deprived of her property without due process of law in the rendition of said judgment and without the equal

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protection of the law, through the denial of a hearing and/or an opportunity to be heard before said court prior to the rendition of judgment;—that she was not permitted or allowed to present testimony on her own behalf and that at the conclusion of the cause, through entry of judgment therein, the trial court itself recited in said judgment, "The Court, after hearing the evidence, including the deposition of the defendant, etc.," recognized that the request of this appellant for a continuance and for a commission to take her deposition was valid and properly made, by including said recitation as a foundation of and for said judgment, when in truth and in fact no such deposition was ever taken or offered in the trial of said cause.

V

Rulings of the Court and Cases Sustaining Jurisdiction

1. In deciding appellant's foregoing appeal and contentions, the Supreme Court of the State of Kansas held that no reversible error appeared in the judgment quieting title to the land in the plaintiff as against this appellant, although in said appeal, as above mentioned, this appellant claimed that she had been deprived of due process of law, the equal protection of the laws and that her property had been taken without due process of law in violation of the 5th and 6th articles and the 14th amendment to the Constitution of the United States.

The foregoing rulings of the District Court of Douglas County, Kansas, and the Supreme Court of the State of Kansas, involve a Federal question under the due process and equal protection clauses of the 5th, 6th and 14th amendments to the Constitution of the United States.

Green v. *Frazier*, 253 U. S. 233, 40 Sup. Ct. Rep. 499:

"The Supreme Court has had frequent occasion to consider what is meant by due process of law, and has always declined to give a precise meaning, preferring to leave its scope to judicial decisions when cases from time to time arise."

Holden v. *Hardy*, 169 U. S. 366, 18 Sup. Ct. Rep. 383:

" 'Due process of law' implies a conformity with natural and inherent principles of justice, and forbids the taking of one man's property or right of property for another's for the state's benefit without compensation, and requires that no one shall be condemned in person or property without opportunity to be heard."

Betts v. *Brady*, 316 U. S. 455, 62 S. Ct. 1252:

"The phrase 'due process of law' formulates a concept less rigid and more fluid than those envisaged in other specific and particular provisions of the Bill of Rights; and its asserted denial is to be tested, not as a matter of rule, but rather by an appraisal of the totality of the facts involved in the particular case."

Buchalter v. *New York*, 319 U. S. 427, 63 S. Ct. 1129, 87 L. Ed. 1492:

"Meaning of due process generally. The due process clause of the Fourteenth Amendment requires that action by a state through any of its agencies must be consistent with the fundamental principles of liberty and justice."

Brinkerhoff-Faris Co. v. *Hill*, 281 U. S. Rep. 673, 679:

"The Federal guaranty of due process extends to state action through its judicial as well as through its legislative, executive or administrative branch of government."

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In the comparatively few cases in which such questions have arisen it has been distinctly recognized that administrative orders, *quasi judicial* in character, are void if a hearing was denied; if that granted was inadequate or manifestly unfair; if the finding was contrary to the indisputable character of the evidence (*Tang Tun* v. *Edsell*, 223 U. S. 681, 32 S. Ct. 359, 56 L. Ed. 610; *Chin Yow* v. *United States*, 208 U. S. 13, 28 S. Ct. 201, 52 L. Ed. 370; *Low Wah Suey* v. *Backus*, 225 U. S. 468, 32 S. Ct. 734, 56 L. Ed. 1167; *Zakonaite* v. *Wolf*, 226 U. S. 272, 33 S. Ct. 31, 57 L. Ed. 218); or if the facts found do not, as a matter of law, support the order made (*United States* v. *Baltimore & O. S. W. R. Co.*, 226 U. S. 14, 33 S. Ct. 5, 57 L. Ed. 104, Cf.; *Atlantic Coast Line R. Co.* v. *North Carolina Corp. Commission*, 206 U. S. 20, 27 S. Ct. 585, 51 L. Ed. 942; *Wisconsin, M. & P. R. Co.* v. *Jacobson*, 179 U. S. 301, 21 S. Ct. 115, 45 L. Ed. 201; *Washington ex rel. Oregon R. & Nav. Co.* v. *Fairchild*, 224 U. S. 510, 32 S. Ct. 535, 56 L. Ed. 863; *Interstate Commerce Commission* v. *Illinois C. R. Co.*, 215 U. S. 470, 30 S. Ct. 155, 54 L. Ed. 287; *Southern P. Co.* v. *Interstate Commerce Commission*, 219 U. S. 433, 31 S. Ct. 288, 55 L. Ed. 283; *Muser* v. *Magone*, 155 U. S. 247, 15 S. Ct. 77, 39 L. Ed. 137).

The opportunity to be heard is an essential requisite of due process of law in judicial proceedings. *Postal Tel.-Cable Co.* v. *Newport*, 247 U. S. 464, 38 S. Ct. 566, 62 L. Ed. 1215; *Windsor* v. *McVoigh*, 93 U. S. 274, 277, 23 L. Ed. 914 915; *Louisville & N. R. Co.* v. *Schmidt*, 177 U. S. 230, 236, 20 S. Ct. 620, 44 L. Ed. 747, 750; *Simon* v. *Craft*, 182 U. S. 427, 436, 21 S. Ct. 836, 45 L. Ed. 1165, 1170.

And as a state may not, consistently with the 14th Amendment, enforce a judgment against a party named in the proceedings without a hearing or an opportunity to be heard (*Pennoyer* v. *Neff*, 95 U. S. 714, 24 L. Ed. 565, 572; *Scott* v. *McNeal*, 154 U. S. 34, 46, 14 S. Ct. 1108, 38 L. Ed. 896, 901; *Coe* v. *Armour Fertilizer Works*, 237 U. S. 413, 423, 35

S. Ct. 625, 59 L. Ed. 1027, 1031), so it cannot, without disregarding the requirement of due process, give a conclusive effect to a prior judgment against one who is neither a party nor in privity with a party therein (*Postal Tel.-Cable Co.* v. *Newport, supra*).

The fundamental requisite of due process of law is the opportunity to be heard. *Grannis* v. *Ordean*, 234 U. S. 385, 34 S. Ct. 779, 58 L. Ed. 1363; *Louisville & N. R. Co.* v. *Schmidt, supra; Simon* v. *Craft, supra.*

2. The foregoing rulings of the District Court of Douglas County, Kansas, and the Supreme Court of the State of Kansas against appellant, in favor of the sufficiency of the judgment and of the sufficiency of an opportunity to be heard and to defend, raises a Federal question under the due process clauses of the 5th amendment to the Constitution of the United States and Section 1 of the 14th amendment to the Constitution of the United States.

Albrecht v. *U. S.*, 273 U. S. 1, 8, 47 S. Ct. Rep. 250;
Louis K. Liggett Co. v. *Baldridge*, 278 U. S. 105, 49 S. Ct. Rep. 57;
Snyder v. *Massachusetts*, 291 U. S. 97, 122;
Powell v. *Alabama*, 287 U. S. 45, 68;
Galpin v. *Page*, 18 Wall. 350, 368, 369;
Baldwin v. *Hale*, 1 Wall. 223, 233;
Twining v. *New Jersey*, 211 U. S. 78, 110;
Washington ex rel. Oregon R. and Nav. Co. v. *Fairchild*, 224 U. S. 510;
Coe v. *Armour Fertilizer Works*, 237 U. S. 413, 419.

VI

There is attached hereto, and marked Exhibit "A", a copy of the Opinion of the Supreme Court of the State of Kansas, in this matter and cause.

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Wherefore, it is respectfully submitted that the appeal of the above entitled cause comes within the proper jurisdiction of the Supreme Court of the United States.

Dated: This 25th day of April, 1947.

GRACE MCNAMARA,
Petitioner and Appellant in Propria Persona.

EXHIBIT "A"

No. 36,627

THE SALVATION ARMY, INCORPORATED, Appellee,

v.

GRACE MCNAMARA, (et al.), Appellant

SYLLABUS BY THE COURT

In an action to quiet title, the appeal being only from the judgment rendered, the record is examined and it is *held*, no reversible error is made to appear in the judgment quieting title to the land in the plaintiff.

Appeal from Douglas District Court; HUGH MEANS, Judge.

Opinion filed January 25, 1947.

Affirmed.

Grace McNamara, of Los Angeles, Calif., was on the briefs *pro se*.

Richard B. Stevens and *John W. Brand*, both of Lawrence, were on the briefs for the appellee.

The opinion of the court was delivered by

WEDELL, *J.*:

This was an action to quiet title to real estate. Plaintiff prevailed and the defendant, Grace McNamara, appeals.

Before considering the appeal on its merits we are confronted with a preliminary matter. It is appellee's motion to dismiss the appeal on the ground appellant's abstract fails to comply with the rules of this court in that it is interlineated with argumentative features. The motion is not without merit but appellant's appearance is *in propria persona* and we prefer to treat the appeal on its merits.

The appeal is only from the final judgment of the court quieting title to the land in question and barring appellants, Grace McNamara and Grace M. McNamara, each a single person, from asserting any right, title, claim, lien or interest therein. The pertinent facts presented by the record are, in substance:

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Service by publication on the appellant, a resident of California, was had and approved; appellant received the necessary notice August 3, 1945; the answer day was September 15, 1945; she made application for an extension of time to plead; although she had no counsel to represent her on the hearing of the application and did not appear in person, an extension of twenty days was granted and the clerk of the court notified her thereof; on October 3 appellant filed her answer; on November 29 the clerk wrote appellant the action was set for trial December 15; on December 6 appellant filed a motion to take her deposition stating, among other things, that it would be presented to the court at 10:00 a. m. December 12, and that she would be unable to appear for the trial in person; to the motion were attached interrogatories; appellant appeared neither in person nor by her counsel to present the motion; December 7 she filed her sworn affidavit in the form of an application for continuance of the trial; neither she nor her counsel appeared to present that motion; the action was tried December 15, was taken under advisement for judgment, and on January 5, 1946, was continued for judgment until February 4, 1946; the trial judge wrote appellant on January 15, 1946, fully notifying her concerning the status of the case and that no judgment would be rendered on February 4, 1946, if she would arrange for some appearance on her behalf on or before that date; names of two local attorneys were suggested to her who the trial court believed might be willing to undertake her defense; in that letter appellant was further advised if no formal action were taken by her, judgment would be rendered on February 4, 1946, quieting the title to the land in plaintiff; instead of appearing in person or obtaining counsel for that hearing appellant wrote the trial judge lengthy letters on January 24 and January 31; on February 4, 1946, the trial judge rendered judgment quieting the title as prayed for by appellee and on February 6 wrote appellant advising her under what statute she might perfect an appeal to this court.

It will serve no useful purpose to narrate further details contained in the various letters written by appellant to the clerk and to the trial judge involving this litigation. Appellant was fully informed that neither the clerk nor the

trial judge was permitted to advise her concerning her substantial rights or relative to procedural steps to be employed to properly make her defense. Appellant received the most courteous and patient treatment at the hands of the trial court. She recognized and expressed that fact in her letters but failed to follow his valuable advice concerning the employment of counsel. She made no appearance in her own behalf. As previously stated the appeal is not from any intermediate orders but only from the final judgment.

The journal entry of judgment does contain an ill-advised recital concerning a consideration of evidence "including the deposition of the defendant." Appellee concedes the quoted phrase was inadvertent. Although that recital was not an accurate statement of fact, since no completed deposition was finally filed, the recital does not vitiate the judgment. The journal entry of judgment discloses the trial court heard and considered the evidence and that being fully advised in the premises rendered judgment pursuant to plaintiff's petition. No reversible error appears in the judgment rendered and it must be affirmed. It is so ordered.

Thiele, J., not participating.

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